THOMAS S. THORSON, JR.

IBLA 74-8 Decided October 15, 1974

Appeal from decision of the Alaska State Office, Bureau of Land Management, rejecting Alaska Native application AA 8264.

Affirmed.

1. Alaska: Native Allotments

   The preference right authorized by the Alaska Native Allotment Act is a personal one and does not survive the death of the applicant unless the applicant had fully complied with the law and regulations and all that remained to be done at the date of his demise was the mere administrative act of issuing an allotment certificate.

2. Alaska: Native Allotments

   No rights inure to the estate of a deceased Native allotment applicant where the application, filed by the deceased during his lifetime, does not show prima facie entitlement and where a basic amendment to the application would be required to conform it with the law, rules, or regulations.

APPEARANCES: Superintendent, Anchorage Agency, Bureau of Indian Affairs for appellant; Loretta C. Douglas, Esq., Office of the Solicitor, Department of the Interior for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE RITVO

Thomas S. Thorson, Jr., filed Alaska Native allotment application, AA 8264, under the provisions of 43 U.S.C. § 270-1 (1970) and the regulations, 43 CFR subpart 2561. The application was dated

January 10, 1971; it was certified by the Bureau of Indian Affairs (BIA) on November 27, 1972. Recitation was made that use and occupancy was initiated in June 1965 and that the land has been used and occupied from June through October each year since 1965 for fishing, hunting, and berry picking. The applicant stated there were no improvements on the land. The application was rejected by decision of May 15, 1973, by the Alaska State Office, Bureau of Land Management (BLM), because of conflict with prior Alaska State selection application, A-054308, filed May 2, 1961. BLM did not know that Thorson had died on January 31, 1973, until long after it rendered its decision.

BIA filed an "appeal" on June 15, 1973. The gist thereof was to the effect that Thorson had erred and that he would now like to amend his application to show initiation of use and occupancy from a time prior to May 2, 1963. It was not until October 5, 1973, that BIA informed this Board that Thorson had died.

Inasmuch as Thorson's application showed initiation of use and occupancy in conflict with a previously filed state application which had been posted to the record, BLM had no alternative except to reject the application; a properly filed state selection application segregates the land from subsequent native allotment. Helen F. Smith, 15 IBLA 301 (1974). The appeal, although ostensibly filed by the deceased, for the purposes of this decision only, may be recognized as having been made by BIA for the protection of the deceased's estate and in behalf of possible distributees of that estate. Cf. Estate of Josephine LaRose Wilson, Deceased, 2 IBIA 60 (1973); Estate of Mary Soulier, 2 IBIA 188 (1974).

[1] In Larry W. Dirks, Sr., 14 IBLA 401 (1974), we held that an Alaska Native's right of selection under the allotment act is nonalienable, nontransferrable, noninheritable, and that it terminates with death. However, where an allotment selection has been made and the applicant has fully complied with the law and regulations and has accomplished all that is required to be done during his lifetime, the right to allotment is earned and becomes a property right which is inheritable.

[2] In the instant case, the application which was pending at the time of Thorson's death, failed to indicate compliance with the law or regulation, i.e., it failed to show that use and occupancy had been properly initiated upon lands open to appropriation. Absent further proofs it failed to detail a prima facie entitlement to allotment. More was required than then appeared in the case record. In this connection we quote from the Secretarial Instruction of October 18, 1973,

> * * * Amendments which are designed to claim the commencement and occupancy at an earlier point in time must also be carefully examined and the applicant must establish the reason for the error, his good faith in making the correction, and the applicant must present convincing evidence of the actual use and occupancy at the earlier point in time. (Emphasis added.)

The decedent's application was incomplete at the time of death because it required a basic amendment to conform it to the law, rules and regulations. Since the deceased had not accomplished all that was required of him (during his lifetime) by the mere filing of the faulty application, the right to allotment was not earned prior to death and there are no rights which can inure to his estate. The application died with Thorson and may not now be revived by any proposed amendments by his estate. Larry W. Dirks, Sr., supra.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision rejecting Native allotment application AA 8264 is affirmed.

Martin Ritvo
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Joan B. Thompson
Administrative Judge